IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 4982 of 2005

Smt.Ramesh Chandulal Shah ..Petitioner

vs.

1. Joint District Registrar
and District Collector of
Stamps, and ors. ..Respondents

Shri C.D'Souza with Shri A.B.Salunkhe i/b
S.Ashwinkumar and Co. for petitioner.
Shri V.P.Malvankar, A.G.P. for respondents.

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
16th August,2005

P.C.

1. By the present petition the petitioner is challenging the order dated 20th April, 2005 passed by the Joint Deputy Registrar and District Collector of Stamps, Raigad inter alia directing the petitioner to make good the deficiency of stamp duty by properly classifying the release deed under Article 25(b)(5) of Schedule I to the Bombay Stamp Act, 1958, hereinafter referred to as the "Act".

2. Briefly the facts are that one Gulabchand Shah alias Gujar was the owner of the agricultural land bearing survey No.37/1, 38/1 and 39/1 situate at village Dhamani, Taluka Khalapur, District Raigad.

Gulabchand Shah died intestate leaving behind him two sons Punjalal and Khemchand. Both Punjalal and Khemchand are dead and the present petitioner represents the branch of Punjalal. It appears that the successor of Khemchand executed a release deed in respect of their one half share in the land on or around 1st week of March, 2005. The release deed was thereafter forwarded for adjudication to respondent no.1. The respondent no.1 by impugned order directed the petitioner to pay the stamp duty at 6% of the market value of the property as contemplated under Schedule I, Article 25(b)(5) of the Act. The case of the petitioner is that the release deed is covered by Article 52 of Schedule I of the Act and the stamp fee of Rs.200/- only is payable.

3. The only issue which falls for our consideration is whether the document of release deed is covered by Article 25(b)(5) of Schedule I or Art.52 of Schedule I to the Bombay Stamp Act, 1958.

4. A similar issue arose before this Court in Asha Krishinlal Bajaj (Smt.) Vs.Sub Registrar of Assurances and others; 2001(2) Bom.C.R.629 where the Division Bench of this Court while considering

the aforesaid issue has held as under:

> "3. The short question for our consideration is whether the impugned documents involved in this case of which copies are annexed to this petition at Exhs.A and C which are identical, amount to deed of conveyance or the deed of release. In his affidavit in reply, the respondent no.2 has stated that the said documents are impounded by the Sub Registrar under section 33 of the Bombay Stamp Act and the son and the daughter have relinquished their shares in favour of their mother which comes under Explanation below section 2(g) of the Bombay Stamp Act. Now, the explanation to section 2(g) of the Bombay Stamp Act reads thus:-
>
> > "Explanation: An instrument whereby a co-owner of any property transfers his interest to another coowner of the property and which is not an instrument of partition, shall, for the purpose of this clause, be deemed to be an instrument by which property transferred inter vives".

Therefore, for a transaction to assume a character of conveyance, what is necessary is, transfer of interest from one co-onwer to another co-owner. As against this, the provision of Art.52 of Schedule I of the Bombay Stamp Act stipulates that the release is that whereby person renounces a claim upon another person or against any specified property.

It is well settled law in this regard that essential ingredients of release are that from the party by a legal right in the property vested in the release and the release should operate to enlarge that right into a absolute title for the entire property, as far as the parties are concerned. There can be no release by one person in favour of another who is not already entitled in the property as co-owner. A release deed is valid not only when it is gratuitous, as release deed can be validly executed also for some benefit accruing to the releaser simultaneously.

In this regard the learned Counsel for the petitioner invited our attention to the

ruling of Madras High Court in the case of Chief Controlling Revenue Authority Vs. Rustom Nusserwanji Patil, A.I.R.1968 Mad.159 wherein it is observed that, in order to determine whether a document is a release or conveyance, the nomenclature or the language used is not decisive. What is decisive is the actual character of the transaction and the precise nature of the rights created by means of the instrument.

4. Therefore, in our view, it is more than clear in this case that, the daughter and the son have renounced their claim in respect of the property in favour of their mother and, therefore, the documents in question are undoubtedly the deed of release without consideration and cannot be held to be the deed of conveyance.

5. The decision in Asha Krishinlal Bajaj was followed by another Division Bench in Shri Shaileshb harilal Poonatar Vs. District Collector of Stamps and ors; 2004(4) All MR 479. In that case the argument was also advanced on behalf of the State that the petitioner and respondent no.3 therein had defined share in the property and they

had independent right, title, and interest in the property which was bequeathed to them under a will. It was, therefore, argued that they are co-owners for the purpose of Stamp Act and Article 52 will not apply but Article 25 will apply because there is no question of release of interest in the immovable property but in fact there is a sale of a defined interest in the immovable property. The Division Bench rejected this argument with the following observations:

> "9. We are not impressed by the argument of the learned counsel for the respondents. Firstly because in every case of a release it is the release of a share or interest which is a defined share or interest in favour of other co-onwers or persons who are holding a joint title in respect of the said property. Even in the case of Hindu Undivided property, every co-parcener will have a defined share which may not have partitioned and in our view this shall make no difference whether a person is having a defined share in the property or an undefined share in the property as long as the interest is held jointly and there is no partition of the said interest among

co-owners. Thus, we find that even if there is a defined share or interest in the property it can still be released in favour of another person. In such a case share or interest of the other co-owner will be accelerated and acquire a larger share than what he was originally holding. In Mulla's Transfer of Property, the word "release" is explained as under:

"A reqlinquishment is not an alienation". Further, in the case of Ramdas Chimna Vs. Pralhad Deorao and others reported in AIR 1965 Bom.74, has been inter alia held as under:

(8) Mr.Deshpande, however, drew my attention to the provisions of Sec.17 of the Registration Act. There is nothing in the Registration Act or the provisions of Sec.17 thereof, which requires any particular transaction to be recorded in writing. The Act requires only that when certain transactions are so recorded, the writing shall be registered. There is nothing in the Transfer of Property Act or any other law that I am so far aware which requires

that a mere extinquishment of an interest in the immoveable property shall be in writing. The relinquishment by Bainabai of her interest in the joint family property was merely abandonment of her interest in the joint family property in favour of her two sons. Such a relinquishment or abandonment of interest in the joint family property, even though it consists of immoveable properties and is of the value of Rs.100/- and upwards can be effected without a written instrument, though if one is executed, it would undoubtedly require registration under Sec.17 of the Registration Act. Gauri Bai Vs.Gaya Bai AIR 1927 Nag.44".

10. In the aforesaid light of facts and circumstances of the case, we find that the argument advanced by the learned counsel for the respondent does not make any difference in so far as the interpretation of the word ’release’ and/or the liability of payment of stamp duty under Article 52 of Schedule I of the Bombay Stamp Act, 1958 is concerned. We are of the view that the judgment of the Division Bench of this Court in the case of

Asha Krishinlall Bajaj (Smt.) Vs. Sub Registrar of Assurances and others (supra) holds the field in full force and the respondent authority is bound and liable to follow the same."

6. In the light of the legal position as explained in the case of Asha Krishinlall Bajaj (Smt) it is clear that Article 52 of Schedule I of the Stamp Act will be attracted in the present case as the document of release is not covered by Article 25(b)(5) of Schedule I to the Act. In the result, rule is made absolute in terms of prayer clause (b) with no order as to costs.

. Issuance of certified copy expedited.